

SENATE BILL No. 527

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-7-2; IC 12-9-5-3; IC 12-10-10-2; IC 12-10-18; IC 12-10.5; IC 12-15-14-1.

Synopsis: Long term care. Establishes a caretaker support program that is administered by the division of disability, aging, and rehabilitative services. Sets forth eligibility requirements, caretaker support services, and a reimbursement formula. Adds adult foster care services to the community and home options to institutional care for the elderly and disabled (CHOICE) program. Requires the office of the secretary of family and social services to implement programs that assist disabled and elderly citizens in living with the maximum amount of freedom. Sets forth eligibility requirements for the assisted living Medicaid waiver. Requires providers who wish to offer services to assisted living waiver recipients to: (1) enroll with the bureau of aging services; (2) ensure that the recipient receives specified rights and care; and (3) complete a service plan for the recipient that is updated as specified. Requires the office of Medicaid policy and planning to apply for the following Medicaid waivers: (1) An amendment to the state Medicaid plan to include personal care services. (2) Modification of eligibility requirements to include spousal impoverishment protection. (3) Modification of eligibility requirements to include individuals with income of not more than 300% of the federal Supplemental Security Income level. Encourages the Indiana health facility financing authority to work with for profit health facilities that are partnered with nonprofit agencies in converting licensed beds to less intensive care beds through bonds.

Effective: Upon passage; July 1, 2003.

Dillon, Lawson C, Simpson, Broden

January 23, 2003, read first time and referred to Committee on Health and Provider Services.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 527

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-7-2-24.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 24.6. "Caretaker", for purposes of IC 12-10.5, has the**
4 **meaning set forth in IC 12-10.5-1-1.**
5 SECTION 2. IC 12-7-2-69, AS AMENDED BY P.L.1-2002,
6 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2003]: Sec. 69. (a) "Division", except as provided in
8 subsections (b) and (c), refers to any of the following:
9 (1) The division of disability, aging, and rehabilitative services
10 established by IC 12-9-1-1.
11 (2) The division of family and children established by
12 IC 12-13-1-1.
13 (3) The division of mental health and addiction established by
14 IC 12-21-1-1.
15 (b) The term refers to the following:
16 (1) For purposes of the following statutes, the division of
17 disability, aging, and rehabilitative services established by



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1 IC 12-9-1-1:

2 (A) IC 12-9.

3 (B) IC 12-10.

4 (C) **IC 12-10.5.**

5 **(D)** IC 12-11.

6 ~~(D)~~ **(E)** IC 12-12.

7 (2) For purposes of the following statutes, the division of family
8 and children established by IC 12-13-1-1:

9 (A) IC 12-13.

10 (B) IC 12-14.

11 (C) IC 12-15.

12 (D) IC 12-16.

13 (E) IC 12-16.1.

14 (F) IC 12-17.

15 (G) IC 12-17.2.

16 (H) IC 12-17.4.

17 (I) IC 12-18.

18 (J) IC 12-19.

19 (K) IC 12-20.

20 (3) For purposes of the following statutes, the division of mental
21 health and addiction established by IC 12-21-1-1:

22 (A) IC 12-21.

23 (B) IC 12-22.

24 (C) IC 12-23.

25 (D) IC 12-25.

26 (c) With respect to a particular state institution, the term refers to
27 the division whose director has administrative control of and
28 responsibility for the state institution.

29 (d) For purposes of IC 12-24, IC 12-26, and IC 12-27, the term
30 refers to the division whose director has administrative control of and
31 responsibility for the appropriate state institution.

32 SECTION 3. IC 12-7-2-103 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 103. "Health facility"
34 means the following:

35 (1) For purposes of IC 12-10-5.5, the meaning set forth in
36 IC 12-10-5.5-2.

37 (2) For purposes of IC 12-10-12, the meaning set forth in
38 IC 12-10-12-3.

39 **(3) For purposes of IC 12-10.5-2, the meaning set forth in**
40 **IC 12-10.5-2-1.**

41 SECTION 4. IC 12-7-2-180.1 IS ADDED TO THE INDIANA
42 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2003]: **Sec. 180.1. "Special needs", for purposes of IC 12-10.5, has the meaning set forth in IC 12-10.5-1-2.**

SECTION 5. IC 12-7-2-168, AS AMENDED BY P.L.272-1999, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 168. "Respite care" means the following:

(1) For purposes of IC 12-10-4 and IC 12-10-5, temporary care or supervision of an individual with Alzheimer's disease or a related senile dementia that is provided because the individual's family or caretaker is temporarily unable or unavailable to provide needed care.

(2) For purposes of IC 12-10.5, temporary care or supervision of an individual with special needs that is provided to give the individual's family or caretaker short term relief from the demands of providing the necessary care.

(3) For purposes of IC 12-22-1, the meaning set forth in IC 12-22-1-1.

SECTION 6. IC 12-9-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. The division shall administer the following programs:

(1) Programs established under any of the following statutes:

(A) This article.

(B) IC 12-10.

(C) IC 12-10.5.

(D) IC 12-11.

~~(D)~~ **(E) IC 12-12.**

(2) Programs under the following statutes, to the extent the division has responsibilities for programs under those statutes:

(A) IC 12-24.

(B) IC 12-26.

(C) IC 12-27.

(D) IC 12-28.

(E) IC 12-29.

(F) IC 12-30.

(3) Supported employment for a person with developmental disabilities.

(4) Epilepsy service centers program.

(5) Epilepsy clinic program.

SECTION 7. IC 12-10-10-2, AS AMENDED BY P.L.255-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. As used in this chapter, "community and home care services" means services provided within the limits of available funding to an eligible individual. The term includes the following:

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(1) Homemaker services and attendant care, including personal care services.

(2) Respite care services and other support services for primary or family caregivers.

(3) Adult day care services.

(4) Home health services and supplies.

(5) Home delivered meals.

(6) Transportation.

(7) Attendant care services provided by a registered personal services attendant under IC 12-10-17 to persons described in IC 12-10-17-6.

(8) **Adult foster care.**

(9) Other services necessary to prevent institutionalization of eligible individuals when feasible.

SECTION 8. IC 12-10-18 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 18. Assisted Living Waiver Services

Sec. 1. This chapter applies to assisted living services provided under the state's Medicaid waiver for assisted living services.

Sec. 2. (a) An individual applying for the state's Medicaid waiver for assisted living services must meet the following requirements:

(1) The individual is at least eighteen (18) years of age.

(2) The individual is aged, blind, or disabled and has primarily medical needs.

(3) The individual is unable to perform at least three (3) activities of daily living.

(4) The individual meets the Medicaid income and resource requirements set forth in IC 12-15 and in administrative rules.

(5) The individual does not receive services under any other state Medicaid waiver.

(b) An individual receiving assisted living services under the state Medicaid assisted living waiver is subject to the same prohibitions concerning the transfer of assets for less than fair market value imposed under the federal Medicaid program (42 U.S.C. 1396p) and state law.

(c) An individual receiving assisted living services under the state Medicaid assisted living waiver is subject to a penalty period of ineligibility under the waiver if the individual transfers assets in violation of the following administrative rules:



1 (1) 405 IAC 2-3-1.

2 (2) 405 IAC 2-3-1.1.

3 Sec. 3. An individual determined eligible to receive services
4 under the state Medicaid assisted living waiver may receive a
5 personal needs allowance as allowed by federal law and IC 12-15.

6 Sec. 4. A payment for services received by an individual under
7 the state Medicaid assisted living waiver is recoverable against the
8 individual's estate in accordance with 42 U.S.C. 1396p.

9 Sec. 5. (a) A provider who wants to provide assisted living
10 services for reimbursement under the state Medicaid assisted living
11 waiver shall apply for enrollment with the bureau or the bureau's
12 designee in a manner prescribed by the bureau and in accordance
13 with section 6 of this chapter.

14 (b) A provider who is not enrolled under subsection (a) but who
15 provides assisted living services to an individual on the state
16 Medicaid assisted living waiver may not be reimbursed under the
17 state Medicaid program.

18 (c) A person or entity may not represent that the person or
19 entity is an adult residential care waiver provider or accept
20 placement of a state Medicaid assisted living waiver recipient until
21 the person or entity is enrolled as a provider under this chapter.

22 Sec. 6. In order to be accepted by the bureau for enrollment to
23 provide assisted living services under the assisted living Medicaid
24 waiver, a provider shall meet the following requirements:

25 (1) The provider must be licensed under IC 16-28 as a
26 residential care facility for the facility that will be providing
27 the waiver services.

28 (2) The provider must complete and submit to the bureau:

29 (A) a provider agreement; and

30 (B) a waiver program enrollment application on a form
31 prescribed by the bureau;

32 before the requested effective date of the contract.

33 Sec. 7. The provider may enroll to provide at least one (1) of the
34 three (3) service levels described in the assisted living waiver.

35 Sec. 8. The bureau may establish by rule under IC 4-22-2
36 requirements that a facility must meet in order to receive
37 reimbursement for services provided under the state Medicaid
38 assisted living waiver.

39 Sec. 9. (a) A provider of adult residential care waiver services
40 who is enrolled to provide services under this chapter shall provide
41 waiver services only to an individual who the bureau or the office
42 of Medicaid policy and planning has determined to be eligible to

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1 receive the state Medicaid assisted living waiver services.

2 (b) The provider shall do the following:

3 (1) Ensure that recipients have control over the recipient's
4 time, space, and lifestyle to the extent that the health, safety,
5 and well-being of the recipient is not disturbed.

6 (2) Promote the recipient's right to make decisions to the
7 fullest extent possible.

8 (3) Provide services for recipients in a manner and in an
9 environment that encourages maintenance or enhancement of
10 a recipient's quality of life.

11 (4) Provide a safe, clean, and comfortable environment that
12 allows a recipient to use the recipient's own personal
13 belongings to the greatest extent possible.

14 (c) The provider shall complete a service plan for a recipient not
15 more than thirty (30) days after the recipient moves into an
16 assisted living facility.

17 (d) The provider shall include the following in the recipient's
18 service plan:

19 (1) Recognition of the recipient's capabilities and right to
20 make choices.

21 (2) Definition of the division of responsibility and the
22 implementation of services.

23 (3) Assessment of the recipient's:

24 (A) health care needs;

25 (B) social needs and preferences;

26 (C) personal care tasks; and

27 (D) frequency of nursing and medication services and the
28 level of assistance needed by the recipient.

29 (4) The date of approval of the service plan.

30 (e) The provider shall keep a copy of the service plan in the
31 recipient's file and give a copy of the service plan to the following
32 people:

33 (1) The recipient.

34 (2) The waiver case manager.

35 (3) The area agency on aging.

36 (f) The provider shall update the service plan for each change
37 in services provided to the recipient.

38 (g) The provider shall review a recipient's service plan at least
39 every ninety (90) days.

40 SECTION 9. IC 12-10.5 IS ADDED TO THE INDIANA CODE AS
41 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
42 2003]:



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ARTICLE 10.5. RESPITE CARE SERVICES

Chapter 1. Caretaker Support Program

Sec. 1. As used in this chapter, "caretaker" means an individual who:

(1) provides ongoing care for an individual who:

(A) is at least eighteen (18) years of age; and

(B) has special needs; and

(2) does not receive money for the care provided under subdivision (1).

Sec. 2. As used in this chapter, "special needs" means any of the following:

(1) Alzheimer's disease or any related disorder.

(2) Inability to perform at least two (2) activities of daily living.

(3) Any other condition that the division determines by rule should be covered by this article.

Sec. 3. The caretaker support program is established.

Sec. 4. (a) The division of disability, aging, and rehabilitative services established by IC 12-9-1-1 shall administer the caretaker support program established under this chapter.

(b) The division of disability, aging, and rehabilitative services shall do the following:

(1) Adopt rules under IC 4-22-2 for the coordination and administration of the caretaker support program.

(2) Administer any state money for the caretaker support program.

Sec. 5. An individual who is at least sixty (60) years of age and:

(1) a caretaker; or

(2) an individual with special needs being taken care of by a caretaker;

is eligible for the caretaker support program.

Sec. 6. Caretaker support program services include the following services administered by the area agencies on aging:

(1) Information for caretakers about available services.

(2) Assistance to caretakers in gaining access to the services.

(3) Individual counseling, organization of support groups, and caretaker training to assist caretakers in making decisions and solving problems in the individual's role as caretaker.

(4) Respite care to offer caretakers temporary relief from caretaker responsibilities.

Sec. 7. The division shall develop and implement a client cost share formula for respite care services.

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Chapter 2. Continuum of Care

Sec. 1. The division shall:

- (1) provide standards for the training of; and
 - (2) promote best practices for;
- continuum of care program providers.**

Sec. 2. The division may adopt rules under IC 4-22-2 necessary to carry out this chapter.

Chapter 3. Home and Community Based Services

Sec. 1. Except as provided under section 2 of this chapter, an individual who is:

- (1) at least sixty-five (65) years of age;
- (2) entitled to medical assistance under the state Medicaid plan; and
- (3) determined to be likely to require the level of care provided in a health facility licensed as a comprehensive care facility;

shall be permitted to choose to receive home and community based services instead of health facility services in the most integrated setting appropriate to the needs of the individual.

Sec. 2. Section 1 of this chapter may only occur as long as the average per capita expenditure estimated by the state is not more than one hundred percent (100%) of what the state estimates would have been spent under the state Medicaid plan for the fiscal year for these individuals in a health facility.

SECTION 10. IC 12-15-14-1, AS AMENDED BY P.L.160-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) Except as provided in subsection (b), payment of services for nursing facilities shall be determined under the same criteria and in a uniform manner for all facilities providing services.

(b) In addition to reimbursement under the uniform rates of payment developed for all nursing facilities under subsection (a):

- (1) nursing facilities that are owned and operated by a governmental entity may receive any additional payments that are permitted under applicable federal statutes and regulations; and
- (2) nursing facilities that are not owned and operated by a governmental entity may receive any additional payments that are permitted under applicable federal statutes and regulations.

(c) Each governmental transfer or other payment mechanism that the office implements under this chapter must maximize the amount of federal financial participation that the state can obtain through the intergovernmental transfer or other payment mechanism.

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(d) Reimbursement rates must be related to the level of care received by the patient.

SECTION 11. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(b) As used in this SECTION, "personal care services" has the meaning set forth in 42 U.S.C. 1396d(a)(24).

(c) Before July 1, 2003, the office shall apply to the United States Department of Health and Human Services for approval to amend the state Medicaid plan to include personal care services for Medicaid recipients.

(d) The office may not implement the amended state Medicaid plan until the office files an affidavit with the governor attesting that the proposed amendment to the state Medicaid plan applied for under this SECTION was approved. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the proposed amendment is approved.

(e) If the office receives approval of the proposed amendment to the state Medicaid plan under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (d), the office shall implement the amendment not more than sixty (60) days after the governor receives the affidavit.

(f) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.

(g) This SECTION expires December 31, 2007.

SECTION 12. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(b) As used in this SECTION, "waiver" refers to the following Medicaid waivers:

(1) Aged and disabled waiver (42 U.S.C. 1396 et seq.).

(2) Assisted living waiver.

(3) Traumatic brain injury waiver.

(c) Before September 1, 2003, the office shall seek approval under 42 U.S.C. 1396 et seq. from the United States Department of Health and Human Services to amend the waivers listed in subsection (b) to modify income eligibility requirements to include spousal impoverishment protection provisions under 42 U.S.C. 1396r-5.

(d) The office may not implement the waiver amendments until the office files an affidavit with the governor attesting that the

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1 federal waiver amendments applied for under this SECTION are
 2 in effect. The office shall file the affidavit under this subsection not
 3 later than five (5) days after the office is notified that the waiver
 4 amendments are approved.

5 (e) If the United States Department of Health and Human
 6 Services approves the waiver amendments requested under this
 7 SECTION and the governor receives the affidavit filed under
 8 subsection (d), the office shall implement the waiver amendments
 9 not more than sixty (60) days after the governor receives the
 10 affidavit.

11 (f) The office may adopt rules under IC 4-22-2 necessary to
 12 implement this SECTION.

13 (g) This SECTION expires December 31, 2007.

14 SECTION 13. [EFFECTIVE UPON PASSAGE] (a) As used in this
 15 SECTION, "office" refers to the office of Medicaid policy and
 16 planning established by IC 12-8-6-1.

17 (b) As used in this SECTION, "waiver" refers to the following
 18 Medicaid waivers:

- 19 (1) Aged and disabled waiver (42 U.S.C. 1396 et seq.).
- 20 (2) Assisted living waiver.
- 21 (3) Traumatic brain injury waiver.

22 (c) Before September 1, 2003, the office shall seek approval
 23 under 42 U.S.C. 1396 et seq. from the United States Department of
 24 Health and Human Services to amend the eligibility requirements
 25 for waivers listed in subsection (b) to include an individual who has
 26 an income that is not more than three hundred percent (300%) of
 27 the federal Supplemental Security Income income eligibility level.

28 (d) The office may not implement the waiver amendment until
 29 the office files an affidavit with the governor attesting that the
 30 federal waiver amendment applied for under this SECTION has
 31 been approved. The office shall file the affidavit under this
 32 subsection not later than five (5) days after the office is notified
 33 that the waiver amendment is approved.

34 (e) If the United States Department of Health and Human
 35 Services approves the waiver amendment requested under this
 36 SECTION and the governor receives the affidavit filed under
 37 subsection (d), the office shall implement the waiver amendment
 38 not more than sixty (60) days after the governor receives the
 39 affidavit.

40 (f) The office may adopt rules under IC 4-22-2 necessary to
 41 implement this SECTION.

42 (g) This SECTION expires December 31, 2007.

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1 SECTION 14. [EFFECTIVE JULY 1, 2003] **If a facility that**
2 **provides assisted living services was:**

3 **(1) in operation before July 1, 2001; and**

4 **(2) in compliance with IC 12-10-15-7 on June 30, 2001;**
5 **an individual living unit provided to a waiver recipient must have**
6 **at least one hundred sixty (160) square feet of liveable floor space.**
7 **The square footage may include closets and counters but may not**
8 **include bathroom space.**

9 SECTION 15. [EFFECTIVE JULY 1, 2003] **The Indiana health**
10 **facility financing authority created by IC 5-1-16-2(a) is encouraged**
11 **to work with for profit health facilities and nonprofit organizations**
12 **that are operating under a joint agreement for the purpose of**
13 **converting health facility beds to less intensive care beds through**
14 **the issuance, sale, or delivery of a bond under IC 5-1-16.**

15 SECTION 16. **An emergency is declared for this act.**

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